

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 36

October 29, 2001

SUBJECT: COMPLAINT REPORTING PROCEDURES - REVISED

PURPOSE: The ability of the police to perform their duties is dependent upon public approval of police actions and behaviors. The ability of the police to secure and maintain public respect and cooperation is tied directly to the public's confidence that their complaints will be fairly and appropriately addressed. Indeed, accepting and investigating community complaints, without bias or prejudice, is consistent with the people's right to redress their grievances with their government, as guaranteed in the Bill of Rights.

It was with these principles in mind that the Department revised its complaint-reporting procedures in 1998 to accept and document all public complaints regardless of whether the complaint alleged misconduct, as defined in the Manual Section 3/805.25. Since then, the number of formal personnel complaints has tripled and that volume has significantly lengthened the time needed to bring a complaint to resolution and provide feedback to the public. The Department's inability to resolve these complaints in a timely manner has also delayed many employees' promotions and transfers.

This Order streamlines the recordation, investigation, and adjudication of complaints enabling them to be resolved more quickly, without jeopardizing the quality of the investigation. In doing so, it revises the various forms used to record and adjudicate personnel complaints, establishes three categories of complaint investigations, and revises the classifications available for adjudication.

PROCEDURE:

- I. COMPLAINT FORM, FORM 1.28.0 - REVISED.** The Complaint Form, Form 1.28.0, has been revised to record all pertinent information available at the initiation of a complaint, including a summary of the complaint and the listing of witnesses and evidence. Preliminary statements or letters may be attached to the Form 1.28.0, as needed. Page 1 of the Form 1.28.0 is used to adjudicate the complaint. The use and distribution of the revised Form 1.28.0 is unchanged.

Note: Internal Affairs Group (IAG) will provide training on the use of the form.

II. CATEGORY III COMPLAINT INVESTIGATION, FORM 1.28.02 - ACTIVATED. The Category III Complaint Investigation, Form 1.28.02, is activated.

A. Use of Form. This form shall be used to investigate a Category III complaint against a Department employee, which is defined as:

- * A complaint involving no misconduct; or,
- * A complaint alleging minor misconduct and/or involving minimal investigative activity.

B. Completion. The completion of this form is self-explanatory.

C. Distribution. When used, the Form 1.28.02 is attached to and distributed as part of the Form 1.28.0.

III. OTHER JUDICIAL REVIEW-CIVIL MATTERS INVESTIGATION/ADJUDICATION, FORM 1.28.03 - ACTIVATED (IAG USE ONLY). The Other Judicial Review-Civil Matters Investigation/Adjudication, Form 1.28.03, is activated.

A. Use of Form. This form shall be used to investigate and adjudicate a complaint against a Department employee who is a plaintiff or respondent in a civil suit where the complaint **does not** allege duty-related misconduct.

B. Completion. The completion of this form is self-explanatory and shall be completed by IAG only.

C. Distribution. When used, the Form 1.28.03 is attached to and distributed as part of the Form 1.28.0.

IV. OTHER JUDICIAL REVIEW-CRIMINAL MATTERS INVESTIGATION/ADJUDICATION, FORM 1.28.04 - ACTIVATED (IAG USE ONLY). The Other Judicial Review-Criminal Matters Investigation/Adjudication, Form 1.28.04, is activated.

A. Use of Form. This form shall be used to investigate and adjudicate a complaint involving a person who has been convicted of a crime and the subsequent complaint alleges misconduct regarding that

conviction. This includes allegations of false arrest and/or conviction based upon false reports, testimony, and/or the fabricating or planting of evidence.

B. Completion. The completion of this form is self-explanatory and shall be completed by IAG only.

C. Distribution. When used, the Form 1.28.04 is attached to and distributed as part of the Form 1.28.0.

V. COMPLAINT - CONDITIONS OF ACCEPTANCE. Complaints shall continue to be accepted from any source: written, verbal, in person or telephonic (or TTY), by mail, facsimile transmission, or by electronic means, anonymously, at Parker Center, any bureau, Area station or substation, at the offices of the Police Commission and the Inspector General, or any other police facility accessible to the public.

Exception: A complaint shall not be initiated when the sole reason consists of one or more of the following issues, unless the initial conversation with the complainant identifies attributable misconduct:

- * Delay in service;
- * Disputed traffic citation;
- * Low-flying airship; or,
- * Complaint by an inmate regarding accommodations, cell assignment, quantity/quality of food, etc.

VI. INVESTIGATIVE FORMAT CATEGORIES - DEFINED. Complaints require various levels of investigative detail, depending on the seriousness of the allegation(s) and/or the complexity of the complaint. Three investigative categories are established based upon the following criteria:

- * Complexity and seriousness of the allegation(s);
- * Number and availability of witnesses;
- * Complexity of the evidence; or,
- * Recurrence of similar misconduct by the employee(s) under investigation.

The following category determinations are established as a general guideline. However, complaints must be

categorized individually based upon the seriousness of the alleged misconduct and/or the complexity of the investigation that will be required to resolve the matter.

A. Category I is a complaint alleging serious misconduct and/or involving a complex investigation, which includes, but is not limited to, the following categories:

- * Alcohol/substance abuse;
- * Benefit abuse;
- * Bias/discrimination based upon ethnicity, gender, age, religion, sexual orientation, medical condition, or disability;
- * Criminal misconduct;
- * Dishonesty, including a complaint brought forth by a prosecutor or judge regarding the veracity of an employee's testimony;
- * Domestic violence;
- * Insubordination;
- * Major or pattern of neglect of duty;
- * Retaliation;
- * Sexual misconduct;
- * Shooting violation;
- * Theft;
- * Unauthorized force/tactics;
- * Unlawful search/seizure;
- * Unbecoming conduct of a serious nature;
- * Complaint involving a significant number of witnesses and/or evidence;
- * False imprisonment;
- * False arrest; or,
- * Complaint likely to involve civil liability or litigation.

Exception: Allegations involving possible liability, false arrest and/or false imprisonment, may be completed on an Other Judicial Review Form or a Category III Form respectively, when all of the criteria are met.

Category I complaint investigations shall be reported using the Department's standard complaint and letter of transmittal formats which are outlined in Department Manual Section 3/830, *The Management Guide to Discipline*, and *Personnel Investigations: A Guide*

for Supervisors. Page 1 of the revised Form 1.28.0, shall be used to adjudicate a Category I complaint.

B. Category II is a complaint alleging misconduct requiring a less complex investigation, which includes, but is not limited to, the following categories:

- * Unbecoming Conduct of a relatively minor nature;
- * Discourtesy; or,
- * Improper Remark(s).

Note: On a complaint of discourtesy or improper remarks, the investigator shall quote as closely and accurately as possible the exact verbiage used and/or action(s) committed by the accused employee.

Page 1 of the Revised Form 1.28.0, shall be used to adjudicate a Category II complaint.

Exception: A Category II investigation may be documented in a Category III investigation format when the investigation determines all of the following conditions:

- * The allegation includes only the complainant and the employee, with no other identified witnesses;
- * No other supporting evidence exists to prove or disprove the allegation; and,
- * The employee does not have a history of similar behavior.

C. Category III is a complaint made against a Department employee involving no misconduct, or a complaint alleging minor misconduct and/or involving minimal investigative leads and/or evidence, which includes, but is not limited to, the following categories:

- * Failure to Appear (FTA);
- * Failure to Qualify (FTQ);
- * Preventable Traffic Collision (PTC);
- * Minor Neglect of Duty;
- * The allegation is UNFOUNDED or EXONERATED by means of audio or videotape recording of the incident;
- * The complainant's allegation(s) is against a Department policy or procedure;

- * The complainant has an established history, documented in the IAG Chronic/Crank Complainant File, of initiating unfounded complaints **and** a thorough preliminary investigation does not reveal misconduct;
- * The complainant appears to have an obvious mental impairment and a thorough investigation discovers no evidence of misconduct **or** that the allegation is demonstrably false;
- * When the completion of the investigation is hampered by an inability to obtain necessary information and/or interview witnesses resulting in insufficient evidence to adjudicate the complaint;
- * A thorough investigation shows no Department employee was involved in the complaint;
- * The complaint is a duplicate of a previously adjudicated complaint or a duplicate of one currently under investigation; or,
- * No misconduct.

Category III complaint investigations shall be reported using Form 1.28.0 and Form 1.28.02. The streamlining of the complaint investigation formats does not change the requirement for a thorough, objective investigation, which should include careful note taking and retention of notes. This note taking should include chronological logs, proper collection and retention of evidence, incorporating tapes and/or other recordings, and frequent progress briefings with commanding officers or their designees during the investigative process. Regardless of the investigative format used, all complaint investigations shall reference the tape number of all recorded interviews.

VII. INTERVIEWING THE ACCUSED EMPLOYEE(S). Category III investigations that clearly demonstrate the employee(s) acted properly may preclude the need to interview the accused employee(s). Similarly, the need for employee interviews may be precluded for complaints dispositioned as DUPLICATE, or NO DEPARTMENT EMPLOYEE. A notation has been included on Form 1.28.02 for employees to acknowledge the complaint investigation and disposition and forego an interview. In such cases, it is not necessary to complete an Employee Investigation Review, Form 1.88.1. The employee's signature on the form does not waive the

employee's right to submit a written response pursuant to Government Code Section 3306.

VIII. TAPE RECORDING INTERVIEWS. To the extent allowed by state law, complaint investigators shall record interviews of complainants, involved employees, and witnesses. Should a non-employee complainant or witness refuse to be recorded, an attempt shall be made to record the refusal on tape or on a signed statement of refusal.

Exception: Recording interviews is not mandatory for Department-initiated complaints alleging minor misconduct such as Failure to Qualify, Failure to Appear, preventable traffic collisions and minor neglect of duty complaints. However, depending on the circumstances of the case, the commanding officer may direct that all interviews be recorded.

IX. OTHER JUDICIAL REVIEW (OJR) FORMS. The OJR classification was implemented to address two types of complaints. One involves post-conviction criminal matters where the facts have already been adjudicated in court. The other pertains to civil matters not involving duty-related activity where no finding of criminal or civil misconduct against the employee has been made, such as an alleged violation of a temporary restraining or child custody order.

Exception: The OJR shall **not** be used to investigate a Claim for Damage.

Two forms have been developed for complaints that may be classified as OTHER JUDICIAL REVIEW. Such investigations would include a Form 1.28.0, containing an allegation, in which the complainant claimed a conviction in court was the result of a false arrest, falsified evidence, reports, testimony, etc., or an allegation that an employee may have violated a civil court order. If an OJR Form can be completed for all required criteria, including listing all pertinent information on the back side of the OJR Form, the OJR Form can be attached to the respective Form 1.28.0, and the adjudication completed using the adjudication sections provided on the Form 1.28.0. Tape numbers of persons interviewed, such as the prosecutor, shall be recorded on the OJR Forms.

If while completing the OJR Form, the investigating officer is directed to **"...not use this form,"** the investigation shall be completed following the appropriate Category II and I format on the Complaint Form, Form 1.28.0.

Separate OJR Forms have been developed to address civil matters (Other Judicial Review-Civil Matters Investigation/Adjudication, Form 1.28.03) and criminal matters (Other Judicial Review-Criminal Matters Investigation/Adjudication, Form 1.28.04).

X. ALLEGED EMPLOYEE MISCONDUCT-DISPOSITIONS - REVISED.

- A. The INCOMPLETE INVESTIGATION disposition is eliminated and replaced with INSUFFICIENT EVIDENCE TO ADJUDICATE.
- B. The CHRONIC/CRANK COMPLAINANT and MENTALLY ILL disposition is eliminated but may be incorporated as a supporting rationale to unfound or exonerate an employee's alleged action or misconduct.
- C. The FRIVOLOUS and OTHER dispositions are eliminated.
- D. The WARNING penalty is eliminated as a disciplinary option for sworn and civilian employees.
- E. For the purposes of disposition, allegations shall be classified as one of the following:
 - * Sustained;
 - * Sustained-No Penalty;
 - * Not Resolved, or,
 - * No Misconduct (); wherein the parentheses would indicate one of the following:
 - 1. Unfounded (UNF);
 - 2. Exonerated (EXON); or,
 - 3. Policy/Procedure (P/P) (when the allegation(s) is against Department policy/procedure as opposed to the conduct of a specific employee).
- F. In addition, the following "Alternate Dispositions" may be used:

- * Other Judicial Review (OJR);
- * Insufficient Evidence to Adjudicate (IETA);
- * Non-Department Employee (NDE);
- * Duplicate (DUP) (cross-reference with Master CF Number); or,
- * Withdrawn by the Chief of Police (WCOP) - **IAG use only.**

Note: All allegations shall be classified as indicated in Sections E and F above. If the adjudicator believes a specific allegation warrants being withdrawn by the Chief of Police (COP) in accordance with Manual Section 3/820.20, supporting rationale shall be included in the "Recommendation" portion of the letter of transmittal for Category I and II investigations or included in the "Adjudication Rationale" for Category III investigations. Such requests will be evaluated by the Review and Evaluation Unit, IAG. If the COP concurs the allegation should be withdrawn, the allegation shall be re-classified and administratively closed as "Withdrawn by the Chief of Police."

XI. FORWARDING OF COMPLAINT FORMS TO INTERNAL AFFAIRS GROUP.

- A. Commanding Officer's Responsibility.** Commanding officers shall ensure that complaints are documented on a Form 1.28.0 and the original forwarded to the commanding officer, IAG, within two working days, or in the event of a weekend, the following business day.

Note: When a Category III investigation is completed, it shall not be forwarded to IAG until a CF number has been assigned and recorded on the report.

- B. Internal Affairs Group Responsibility.** Internal Affairs Group shall promptly review the Form 1.28.0, determine whether the complaint will be investigated by IAG or by the employee's command, and promptly make the appropriate notification(s).

Internal Affairs Group shall provide the Office of the Inspector General with all complaint information including

the entity assigned to investigate the complaint within one week of receiving the complaint.

FORM AVAILABILITY: The revised Complaint Form, Form 1.28.0, the Category III Complaint Investigation, Form 1.28.02, and the Other Judicial Review - Civil Matters - Investigation/Adjudication, Form 1.28.03, and the Other Judicial Review - Criminal Matters - Investigation/Adjudication, Form 1.28.04, will be available for ordering from the Department of General Services, Distribution Center, within 180 days, and will be placed on the Local Area Network System (LAN). Copies of the forms are attached for duplication and immediate use.

AMENDMENTS: This Order amends Sections 3/810, 3/815, 3/820.20, 3/830.30, 5/1.28.0, and adds Sections 5/1.28.02, 5/1.28.03, and 5/1.28.04 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, IAG, shall monitor compliance with this directive in accordance with Department Manual Section 0/080.30.

BERNARD C. PARKS
Chief of Police

Attachment

DISTRIBUTION "D"